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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/440,020	11/12/99	WALDRON	S 032-26-001

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EXAMINER

SMITH, J

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 08/23/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/440,020

Applicant(s)

Waldron

Examiner
Jeffrey A. Smith

Group Art Unit
3732



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-10 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 3-5, and 8 is/are rejected.

☒ Claim(s) 2, 6, 7, 9, and 10 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Nov 12, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 and 3

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Drawings

✓ The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "48" (page 8, line 20); "50" (page 9, line 14); "52" (page 9, lines 14 and 15); and "54" (page 10, line 17). Correction is required.

✓ The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "19" (Fig. 10). Correction is required.

✓ The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "18" has been used to designate both a filter assembly (Figs. 1-3) and what is believed to be a vent hole (Fig. 10). Correction is required.

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Specification

✓ The disclosure is objected to because of the following informalities: the Examiner suggests that Applicant re-read page 9, lines 10-17; and page 10, lines 17-19) and compare their disclosure with the discloser of Figs. 10 and 11. The written and figurative disclosures do not appear to have the appropriate cross-correspondence of reference numerals.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper (U.S. Patent No. 2,701,559).

Cooper discloses (Fig. 1) a device for removing portions of the outer layers live cells from a tissue surface (col. 1, lines 15-18) comprising a source of a vacuum (9); and a tube (11 and 18) with an abrasive treatment tip (19) thereon. The tube is

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attached to the source of vacuum so that a lumen (16) through the tube has a reduced pressure therein which is less than the ambient pressure surrounding the tube. The abrasive tip has at least one opening (20) therein for applying the reduced pressure within the tube to said tissue surface (see col. 2, line 78-col. 3, line 3).

With regard to the recitations of claims 3-5, it is noted that Cooper discloses a valve mechanism (31) which serves as a well-known means for varying the level of reduced pressure applied through the treatment tip. The valve mechanism is mounted in the treatment tube (portion 11) and is in operative connection to the source of vacuum (see Fig. 1).

The recitation "skin" has been considered. However, such recitation lends itself to the intended use of the device and does not serve to distinguish the structure of the instant invention from that of Cooper. Moreover, the device of Cooper appears to be reasonably capable of performing the function recited despite Cooper's silence to that regard.

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Allowable Subject Matter

Claims 2, 6, 7, 9, and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

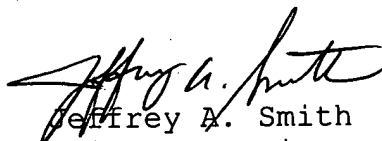
The additional references cited disclose various features which are similar to those disclosed by Applicant.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (703) 308-3588.


Jeffrey A. Smith
Primary Examiner
Art Unit 3732

jas
August 19, 2000